

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

**MEMORANDUM ON PROPOSED TARIFF LEGISLATION
of the 108th Congress ¹**

[Date approved: April 7, 2004]²

Bill No. and sponsor: S. 1739; 108th Congress (Senator Kerry and Sen. Kennedy).

Proponent name, location: Jana Worldwide, Natick, MA (Ph 508-620-0001); contact: Bill Boger of Perkins, Smith & Cohen, Washington, DC (202-789-1035).

Other bills on product (108th Congress only): S.1782 and H.R. 3620.³

Nature of bill: Temporary duty suspension through December 31, 2006; limited to named countries.

Retroactive effect: None.

Suggested article description(s) for enactment (including appropriate HTS subheading(s)):

We suggest a slight modification of the description to be consistent with other tariff provisions and a correction of tariff references:

“Tuna, in foil or other flexible airtight containers, the foregoing weighing with their contents not more than 6.8 kg each (provided for in subheadings 1604.14.10, 1604.14.22 or 1604.14.30)”.

Check one: ☐ Same as that in bill as introduced
☒ Different from that in bill as introduced (see technical comments section)

Product information, including uses/applications and source(s) of imports:

Tuna has traditionally been marketed in metal cans. However, tuna in flexible pouches, a relatively new product, is currently imported and domestically produced in small amounts. For tariff purposes, tuna in metal cans and tuna in flexible pouches are both considered to be packed in airtight containers. Industry sources report that tuna in pouches accounts for 3 percent of the retail tuna consumption in the United States.⁴ Pouches are not presently a close substitute for canned tuna. Unlike tuna packed in metal cans, tuna in pouches contain almost no added liquid (oil or water) and, according to marketing officials of the three domestic canners, consumers consider pouch tuna a higher quality product. Moreover, because a

¹ Industry analyst preparing report: Rose M. Steller (202-205-3323); Tariff Affairs contact: Jan Summers (202-205-2605).

² Access to an electronic copy of this memorandum is available at <http://www.usitc.gov/billrpts.htm> Access to a paper copy is available at the Commission's Law Library (202-205-3287) or at the Commission's Main Library (202-205-2630).

³ Both of these bills impose a worker rights requirement not found in S. 1739.

⁴ Forum Fisheries Agency, *Tuna Market News*, August 6, 2002, Issue No. 30, found at Internet address <http://www.ffa.int/docs/TMN.update.2002.07.pdf>, retrieved Jan. 28, 2004.

pouch contains almost 100 percent tuna meat, while a can contains one-third to one-half liquid medium, the retail price per pound listed on grocery store shelves is higher for pouches.⁵ The technology for production of tuna in foil pouches is more expensive than that used for production of tuna in metal cans; however, pouched tuna production is expected to grow due in part to its portability.⁶ Production of pouched tuna is more labor intensive than that of tuna packed in metal cans, as the pouches are filled manually while cans are filled mechanically. Thus, production of pouched tuna is generally done in countries with low wage rates such as Ecuador and Thailand.

U.S. canned tuna production totaled 248,100 metric tons in 2002 (latest data available), up about 8 percent from 2001 but down about 19 percent from 2000. Reduced processing capacity as a result of the closure of a cannery in Puerto Rico during 2001 contributed to the overall decline in U. S. canned tuna production.

U.S. imports of tuna in airtight containers (cans or pouches) totaled 208.2 metric tons, valued at \$455.4 million in 2003, up 57 percent in quantity and 45 percent in value from 2001. Tuna in cans accounted for the bulk of U.S. tuna imports in airtight containers. In 2003, the ratio of U.S. imports of tuna in pouches to total U.S. imports of tuna in airtight containers was 20 percent in terms of quantity and 29 percent by value. U.S. imports of tuna in pouches totaled 40.7 metric tons, valued at \$131.8 million for 2003. About 75 percent of U.S. imports of tuna in pouches were reported under the tariff category for tuna in water, other than albacore; other shipments were reported under provisions for albacore in water (22 percent) and tuna in oil (3 percent). In quantity and in value terms, ASEAN countries accounted for 76 percent of the quantity and 71 percent of the value of U.S. airtight container tuna imports (cans and pouches) in 2003. Thailand was the largest U.S. import supplier with 46 percent of the quantity and value. Imports from ANDEAN countries (virtually all from Ecuador) accounted for 21 percent of the total quantity and 26 percent of the value. Ecuador was the largest supplier of imports of tuna in pouches in 2003 (53 percent of the quantity and value); followed by Thailand (40 percent of quantity and value). U.S. imports of tuna in pouches from Ecuador and other Andean countries are eligible to enter free of duty under the ATPDEA.

Tuna in foil or other flexible containers weighing with their contents not more than 6.8 kg each is imported under HTS statistical reporting numbers 1604.14.1010, 1604.14.2251, 1604.14.2291, 1604.14.3051 and 1604.14.3091. Prior to August 2002, tuna in pouches was not separately provided for in the HTS, and imports were reported as tuna in airtight containers (along with tuna in metal cans).

The HTS statistical categories were created as a result of section 3103(a)(2) of the ATPDEA, part of the Trade Act of 2002.⁷ Canned tuna packed in oil has a general duty rate of 35 percent ad valorem (ad val) under subheading 1604.14.10. A tariff-rate quota exists for canned tuna packed “not in oil” (e.g., in brine or spring water). Within-quota shipments (subheading 1604.14.22) are dutiable at 6 percent ad val., with excess imports dutiable at 12.5 percent ad val. (subheading 1604.14.30). The trigger quantity in any calendar year is 4.8 percent of apparent U.S. consumption of tuna in airtight containers during the immediately preceding year. The preliminary trigger quantity for 2004 is 20,658,703 kilograms (the 2003

⁵ Roger Corey and Ronald Babula, *Fact Sheet Update: Likely Impact of U.S. Tariff Modification for Tuna Imported from ATPA Beneficiaries*, July 2, 2002.

⁶ *Chicken of the Sea launches pouched shellfish line*, found at Internet address <http://www.thewaveonline.com/article/Default.asp?id+17486>, retrieved Jan. 30, 2004.

⁷ Public Law 107-210, 116 Stat. 933, 1029 *et seq.* Section 3103 amended section 204 of the original Andean Trade Preference Act (19 U.S.C. 3203). See also subchapter XXI to chapter 98 of the HTS.

consumption data are not yet final; final numbers should be out sometime in late February or early March). The within-quota provision filled on or about January 2, 2004, triggering the 12.5 percent duty.⁸

Estimated effect on customs revenue:

We are providing data on estimated revenue loss for the HTS subheadings we believe should be covered by the proposed heading, on the assumption that the intent is to refer to the same provisions eligible under the ATPDEA. Subheading 1604.30.91 is a nonexistent provision and thus is clearly wrong.

HTS subheading: 1604.14.10			
	2004	2005	2006
Col. 1-General rate of duty (AVE) <u>1/</u>	35.0	35.0	35.0
Estimated value <i>dutiable</i> imports (dollars)	\$9,333	\$9,333	\$9,333
Customs revenue loss (dollars)	\$3,267	\$3,267	\$3,267

HTS subheading: 1604.14.22			
	2004	2005	2006
Col. 1-General rate of duty (AVE) <u>1/</u>	6.0	6.0	6.0
Estimated value <i>dutiable</i> imports (dollars)	\$154,490	\$154,490	\$154,490
Customs revenue loss (dollars)	\$9,270	\$9,270	\$9,270

HTS subheading: 1604.14.30			
	2004	2005	2006
Col. 1-General rate of duty (AVE) <u>1/</u>	12.5	12.5	12.5
Estimated value <i>dutiable</i> import (dollars)	\$59,223,968	\$59,223,968	\$59,223,968
Customs revenue loss (dollars)	\$7,403,103	\$7,403,103	\$7,403,103

1/ The AVE is the ad valorem equivalent of a specific or compound duty rate expressed as a percent, using the most recent import data available.

⁸ Email from Steve Koplin, National Marine Fisheries Service, Department of Commerce, Jan. 27, 2004.

Total estimated revenue loss			
	2004	2005	2006
Dollars	\$7,415,640	\$7,415,640	\$7,415,640

Source: Official U.S. Government statistics and Commission estimates.

Contacts with domestic firms/organizations (including the proponent):

Name of firm/organization	Date contacted	US production of same or competitive product claimed?	Submission attached?	Opposition noted?
		(Yes/No)		
Jana Worldwide/Natick, MA by Bill Boger, Attorney, Perkins, Smith, Cohen & Crowe, Ph 202-789-1035	Jan. 28, 2004		No	
Melissa Mueller/Staff of Representative Neal, Ph 202-225-5601	Jan. 28, 2004		No	
Arthur Coviello/Staff of Senator Kerry, Ph 202-224-2742	Feb. 23, 2004		No	
Bill Boger/Attorney, Perkins, Smith, Cohen & Crowe, Ph 202-789-1035	Jan. 28, 2004		No	
Dennis Mussell, President & CEO, Chicken of the Sea, Ph 858-597-4242, Fax 858-597-4566	Feb. 4, 2004	Yes (limited; see statement)	Yes	
Charles Hansen, Starkist Seafood, Ph 412-222-8417 or fax 412-222-1936	Feb. 5, 2004	Production in American Samoa	Yes	Yes
Paul Krampe, Exec. Dir., United Tuna Cooperative, Ph 619-238-1838	Jan. 30, 2004		No	Yes
John Styker, Bumble Bee Seafoods, L.L.C., Fax 858-560-6045	Feb. 4, 2004		No	
Randi Thomas, U.S. Tuna Foundation, Ph 202-857-0610	Feb. 4, 2004		No	

Juan Carlos Apunta, Commercial Attache Embassy of Ecuador, Ph 202-234-7200	Feb. 17, 2004		Yes	Yes
Hon. Eni F.H. Faleomavaega, Member of Congress for American Samoa, Ph 202- 225-8577	Mar. 3, 2004	Production in American Samoa	Yes	Yes

Technical comments:⁹

Product description—The proposed change in the article description and correction of tariff references would track the provisions adopted at the statistical level to permit administration of the tuna benefit accorded under the Andean Trade Promotion and Drug Eradication Act (ATPDEA). As noted above, subheading 1604.30.91 does not exist, and we believe the intended coverage would be subheadings 1604.14.10, 1604.14.22 and 1604.14.30. It is suggested that both the special duty rate and the column 2 duty rate for this heading read “Free, as provided in U.S. note 17 to this subchapter”. We note that at present products of Laos are subject to duty under HTS column 2 (see general note 3(b)) rather than under column 1, and therefore are ineligible for entry under the special rates subcolumn of column 1. (Products of the other two current column 2 rate countries, Cuba and North Korea, are embargoed.) Thus, subdivision (a) of proposed U.S. note 17 should read “at the special or column 2 rates of duty set forth in such heading” to reflect that the new provision is in fact not a subheading. We would also suggest amending subdivision 17(b) by striking “shall be limited to the quantity” and inserting in lieu thereof “shall be limited to an aggregate quantity that is identical to the aggregate quantity”. It may be useful to consider a further refinement of language to clarify that this quantitative limit is meant to be the level of duty-free actually given rather than merely what importers claimed, which could be achieved by adding “and liquidated” after the second appearance of “entered” in subdivision 17(b). Moreover, we note that, unlike S. 1782 and H.R. 3620, this bill would not impose a requirement that countries protect internationally recognized worker rights to qualify for this provision. Last, implementing this provision as of the 15th day after its enactment would like present significant administrative burdens to CBP.

Eligibility requirements-- If the identical restrictions imposed on ATPDEA beneficiary countries for preference eligibility are intended to apply under this act, then the provisions must be restated or an appropriate reference made; a reference to either the ATPDEA or U.S. note 2 to subchapter XXI of HTS chapter 98. For example, for duty-free entry under the ATPDEA, tuna must be harvested by United States vessels or by ATPDEA beneficiary country vessels. As drafted, this bill appears to be less restrictive. On the importers’ part, there may be some confusion every year as to the quantity of tuna available for entry under the new provision, given the time lag required for Customs first to obtain U.S. consumption data, determine the quantity of ATPDEA tuna eligibility for duty-free entry, and then apply the same quantitative limit to this new heading.

⁹ The Commission may express an opinion on the HTS classification of a product to facilitate consideration of the bill. However, by law, only the U.S. Customs Service is authorized to issue a binding ruling on this matter. The Commission believes that the U.S. Customs Service should be consulted prior to enactment of the bill.



Dennis Mussell
President & CEO

February 12, 2004

Ms Rose Steller
USITC/AFP
500 E. Street, SW, Rm 514K
Washington, D.C. 20436

Dear Ms. Steller:

Thank you for providing the opportunity for Chicken of the Sea International (COSI) to include our comments in the U.S. International Trade report regarding S. 1782, "Fair Trade in Pouch Tuna Act of 2003". COSI supports passage of the Bill based upon the following facts and rationale:

1. **The tuna pouch business in the U.S. is a relatively small niche business in the industry.** The total U.S. tuna market is approximately \$1.250 Billion. Of the approximate 48 million cases of tuna sold in the U.S., canned and pouch, less than 5 million cases of tuna pouches are sold or less than 10% on a volume basis. Pouch tuna offers many consumer and foodservice user advantages such as portability, improved presentation, less storage space, and reduced packaging waste disposal, but the selling prices for pouches are significantly more expensive than canned tuna.
2. **99% of all tuna sold in pouches in the U.S. are imported from ASEAN countries (primarily Thailand) or ATPA countries (primarily Ecuador).** The pouch tuna was developed by tuna processors in Thailand and other ASEAN countries. The slow fill rate of packaging pouches and increased labor versus cans results in cost advantages for third-world, high unemployment and low wage areas. Pouches will likely always be predominately processed in low labor rate countries due to processing economics. Chicken of the Sea processes small quantities of larger tuna pouches (43 oz) primarily for Berry Amendment "Buy American Act" government sales.
3. **Passage of S. 1782 will level the playing field and return fair trade that existed**

before the newest version of the ATPA was enacted in 2002. Imports of ATPA pouch products represent over 50% of all pouched imports for the first 11 months of 2003. The value of ATPA pouch imports for the same 11 months was \$66.2 million dollars. This is significant growth considering that the three-year total prior to 2000 for all canned products to the USA from the APTA was only \$10.9 million dollars, or an 18-fold increase. (2000 was the year identified by the ITC in their July 2002 ATPA Fact Sheet as the year pouch exports from the ATPA began)

4. **The current ATPA agreement favors one company in particular, StarKist, which represents almost the entire pouched imports from Ecuador into the USA.** Since the ATPA legislation was implemented the StarKist average retail selling prices for pouch tuna has remained virtually unchanged (\$2.73 in September 2001 versus \$2.76 in January 2004). Apparently none of the 12.5% duty savings were passed on to the U.S. consumer. Passage of S. 1782, providing the ASEAN Pact countries with duty free pouch imports would create a competitive environment stimulating further expansion in the pouch sector which is the only growth area in the shelf stable tuna section.
5. **Passage of S. 1782 would have only a small or insignificant direct price impact on domestic canners due to the fact that pouches are not presently a close substitute for canned tuna (as noted in the ITC's July 2002 ATPA Fact Sheet).** The U.S. processors are not currently packing meaningful volume of pouches and we estimate ultimately this Bill will provide a benefit to the US consumer in the form of lower prices on pouched tuna.
6. **The countries of ASEAN Pact are at the top of the U.S. list of countries it is working with to help fight terrorism.** Passage of S. 1782 will facilitate significant job creation in regions desperately requiring increased employment.

Chicken of the Sea is a major United States processor and marketer of canned tuna under the famous "Chicken of the Sea" brand. For over 50 years COS has owned and operated a large tuna processing facility in American Samoa currently employing over 2,400 people processing over 80,000 tons of high quality raw tuna per year. A majority of the raw material tuna required to operate the cannery is secured from United States tuna fishermen. These owners – operator fishermen have been our suppliers even longer than when we pioneered construction of our facility in American Samoa. COSI has a huge stake in the U.S. tuna industry. Our support

of S. 1782, "Fair Trade in Pouch Tuna Act of 2003" stems from our sincere effort to make the U.S. tuna industry a viable and growing industry. Passage of S. 1782 will

not harm our tuna operations in American Samoa nor will it damage the U.S. tuna industry in our opinion. Pouch tuna is currently an imported product due to the economics of processing tuna in a pouch. This kind of "fair trade" policy is needed in order to stimulate consumer acceptance of pouches and supply excellent high protein tuna to the consumers at the best competitive prices. Duty free pouch tuna imported into the U.S. will stimulate competition among the U.S. marketers and will increase tuna consumption. The resulting activity of increased consumption of nutritious and popular pouch tuna will advance the U.S. war on obesity. At the same time, through desperately needed increased employment and trade in ASEAN countries, it will assist essential U.S. partners in fighting terrorism.

Sincerely,

Dennis Mussell
President & CEO

108TH CONGRESS
1ST SESSION

S. 1739

To provide duty-free treatment for certain tuna.

IN THE SENATE OF THE UNITED STATES

OCTOBER 16, 2003

Mr. KERRY (for himself and Mr. KENNEDY) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To provide duty-free treatment for certain tuna.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Trade in Pouch
5 Tuna Act of 2003”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) a strong relationship between the United
9 States and the member nations of the Association of
10 Southeast Asian Nations (ASEAN) is a force for
11 stability and development in the Southeast Asian re-

1 gion and international trade is a critical element of
2 this relationship;

3 (2) many of the ASEAN nations are important
4 friends and allies in the ongoing fight against world
5 terrorism;

6 (3) ASEAN nations provide a large portion of
7 the processed tuna imported into the United States;

8 (4) such imports are subject to tariffs whereas
9 tuna in airtight pouches imported from the bene-
10 ficiary countries of the Andean Trade Promotion
11 and Drug Eradication Act (Andean) are not;

12 (5) as a result, tuna in airtight pouches im-
13 ported from ASEAN member nations is placed at a
14 competitive disadvantage that has harmed the econo-
15 mies of these nations and that will ultimately harm
16 consumers in the United States; and

17 (6) eliminating tariffs on pouch tuna imported
18 from the ASEAN countries in a quantity equal to
19 the quantity imported from Andean countries will re-
20 store fair trade in the pouch tuna market and will
21 benefit United States consumers and the economies
22 of the ASEAN nations.

1 **SEC. 3. MODIFICATION OF DUTY TREATMENT FOR CERTAIN**
 2 **TUNA.**

3 (a) IN GENERAL.—Subchapter II of chapter 99 of
 4 the Harmonized Tariff Schedule of the United States is
 5 amended by inserting in numerical sequence the following
 6 new heading:

“	9902.16.04	Tuna in foil or other flexible containers weighing with their contents not more than 6.8 kg each (provided for in subheading 1604.30.91)	No change	Free, if the product of a country listed in U.S. Note 17 to this subchapter and in the quantity provided for in such Note	No change	On or before 12/31/2006	”.
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7 (b) ASEAN COUNTRIES.—The U.S. Notes to sub-
 8 chapter II of chapter 99 of the Harmonized Tariff Sched-
 9 ule of the United States are amended by adding at the
 10 end the following:

11 “17. For purposes of heading 9902.16.04:

12 “(a) Products of the following countries are eli-
 13 gible to enter at the special rate of duty set forth
 14 in such subheading: Brunei, Cambodia, Indonesia,
 15 Laos, Malaysia, Philippines, Singapore, Thailand,
 16 and Vietnam. The term does not include the Union
 17 of Myanmar.

18 “(b) The aggregate quantity of tuna entered
 19 under subheading 9902.16.04 during any calendar

1 year shall be limited to the quantity of tuna entered
2 free of duty from an ATPDEA beneficiary country
3 (as defined in section 204(b)(6)) of the Andean
4 Trade Preference Act (19 U.S.C. 3202(b)(6)) and
5 designated in Note 11(d) of this Schedule) during
6 the preceding calendar year pursuant to section
7 204(b)(4) of the Andean Trade Preference Act (19
8 U.S.C. 3202(b)(4)).”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section apply to goods entered, or withdrawn from
11 warehouse, for consumption on or after the 15th day after
12 the date of enactment of this Act.

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